

### ARGUMENTS/REMARKS

Applicant has reviewed the above-identified patent application in light of the final Office Action having a mailing date of October 25, 2010. In view of the amendments and arguments presented herein, Applicant respectfully submits that the claims are in condition for allowance.

The Examiner has rejected the previous amendment to the specification under 35 U.S.C. §132(a) as introducing new matter. Similarly, Claims 28 and 39 have been rejected under 35 U.S.C. §112 as containing new matter and being indefinite. Claims 11-15, 21-30, and 32-39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Gebert, in view of Ball '241, U.S. Patent No. 4,890,967 to Rosenbaum ("Rosenbaum"), and Holt. Claims 16-20 have been rejected as being unpatentable over Gebert, in view of Ball '241, Rosenbaum, Holt and further in view of Ball '931. Claim 31 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Gebert, in view of Ball '241, Rosenbaum, Holt and further in view of Delanoy.

Claims 28, 31, and 39 have been cancelled. Claims 1-10 were previously cancelled, thus, Claims 11-27, 29, 30, and 32-38 are pending.

#### **Finality of the Present Office Action**

Applicant respectfully requests that the Examiner withdraw the finality of the present office action as the amendments made in the office action response of September 13, 2010 did not necessitate the new grounds of rejection. More specifically, Section 706.01(a) of the MPEP, states that a second or any subsequent action on the merits shall be final, *except* when the Examiner introduces a new ground of rejection that is neither necessitated by Applicant's amendment of the claims or based on information submitted in an information disclosure statement. Further, Section 706.07 of the MPEP states that "[t]he applicant who is seeking to define his or her invention in claims that will give him or her the patent protection to which he or she is justly entitled should receive the cooperation of the examiner to that end, and not be prematurely cut off in the prosecution of his or her application. ....The examiner should never lose sight of the fact that in every case the applicant is entitled to a full and fair hearing, and that a clear issue between applicant and examiner should be developed, if possible, before appeal."

Attention is directed to page 7 of the Office Action where the Examiner generally states that Espey was previously relied upon for disclosing the use of a decorative cap to enhance the appearance of an exposed nut. The Examiner also states that Rosenbaum “better addresses the new claim limitations concerning a direct engagement between a decorative cap and the lugs of nut.” Applicant traverses this latter statement as the claimed concept of “direct engagement” between the nut and the cap is not new. Review of the record will show that this concept has been an element of the claims for quite some time and that the amendment of September 13, 2010 did not change the scope of the claims in such a way to warrant the issuance of a final office action. Further, the newly-cited art was found by the Examiner and not listed in an Information Disclosure Statement submitted by the Applicant.

Thus, the finality of this Office Action is improper and reconsideration is respectfully requested.

#### **Claim Rejections - 35 U.S.C. §132(a)**

The Examiner has rejected the amendment to the specification related to a cap that is “configured to completely conceal” the nut. Although Applicant believes that this feature is succinctly shown in the drawings and no new matter has been added, to facilitate prosecution, the objected-to portion of the specification has been cancelled.

#### **Claim Rejections - 35 U.S.C. §112**

The Examiner has rejected Claims 28 and 39 as including new matter and being indefinite. Similar to the rejection to the specification outlined above, the Examiner has asserted that the features found in Claims 28 and 39 comprise new matter. Applicant respectfully disagrees. Nevertheless, in order to facilitate prosecution, Claims 28 and 39 have been cancelled, thereby rendering this rejection moot.

#### **Claim Rejection - 35 U.S.C. §103(a)**

The Examiner has rejected Claims 11-15, 21-30, 32, and 39 as being obvious in view of a combination of Gebert, Ball ‘214, Rosenbaum, and Holt. The Examiner asserts that Gebert discloses the majority of the claimed subject matter, i.e., an overflow assembly and Ball ‘241 discloses the use of diaphragm in connection with the overflow assembly.

Newly-cited Rosenbaum has been cited disclosing direct engagement between a cap (30) and a nut (12) via a plurality of lugs (14) on the nut. Applicant disagrees with this characterization of Rosenbaum. More specifically, Rosenbaum discloses a cover that interconnects to a retainer made of a resilient compressible material. The retainer has legs that align with flats of a bolt head or a nut to which the cap is designed to conceal.

The Examiner has mischaracterized Rosenbaum. More specifically, attention is directed to Fig. 2, that shows a retainer (20) interconnected to a head of a bolt (12) (see Fig.3). The retainer (20) has a plurality of legs (22) that each have a rib (24). In practice, the retainer is placed upon the head of the bolt wherein the legs are engaged onto the flats (14) of the bolt. The flats of the bolt head are not “lugs” of a nut as claimed. The cap (30) is then interconnected to the retainer wherein the inner surface (32) of the cap (30) is engaged onto the ribs (24). Nowhere in Rosenbaum is the teaching of a nut, or the head of a bolt, that possesses a plurality of lugs that detachably engage with the cap as found in Claim 1, for example.

As in Gebert and Rosenbaum contemplates a multipart system for interconnecting the cap to the overflow port. Gebert or Rosenbaum do not disclose a nut that has a plurality of lugs that directly interface with a cap in a detachable manner. Further, the portion of Holt cited by the Examiner has nothing to do with the mechanism employed to interconnect the cap to the nut.

Thus, the Examiner has failed to show *prima facie* obviousness as the references cited do not teach each and every one of the elements claimed. CFMT, Inc. v. Yieldup Int’l Corp., 349 F.3d 1333, 1342 (Fed. Cir. 2003). Accordingly, it is believed that Claims 11, 21, and 24 are allowable as the Examiner has not provided references that when combined teach each and every one of the elements claimed. Furthermore, Claims 12-15, 22, 23, 25-27, 29, 30, 32, and 39 are believed to be allowable as they depend on an allowable base claim.

Claims 16-20 have been rejected as being obvious in view of a combination of Gebert, Ball ‘241, Rosenbaum, Holt, and Ball ‘931, wherein Ball ‘931 has been cited for disclosing the claimed drain system. Reference is made to the arguments regarding Rosenbaum provided above and it is respectfully asserted that the combination of references does not meet the Examiner’s burden of *prima facie* obviousness. That is, the

cited combination does not include all of the elements found in the claims. Thus withdrawal of this rejection is respectfully requested.

Claim 31 has been rejected as being obvious in view of a combination of Gebert, Ball '241, Rosenbaum, Holt, and Delanoy. Withdrawal of this rejection is respectfully requested as Claim 31 has been cancelled.

### **Terminal Disclaimer**

A Terminal Disclaimer was filed along with the response filed September 13, 2010. In view of the Examiner's remarks found in page 9, paragraph 10 of the Office Action, Applicant has filed a Petition under 37 C.F.R. §1.182 to withdraw the Terminal Disclaimer. More specifically, in order to support a rejection based on the judicially-created doctrine of double patenting, the Examiner has to provide evidence that the claims of the instant application and those of a reference relied upon (Ball '406) are not patentably distinct. Here, the Examiner has stated that the claims of Ball '406 and the disclosure of the instant application vary in at least two ways. First, "the lug and the cap engagement feature of the '406 patent differ significantly from the lug and cap engagement feature of the instant CIP application" (emphasis added). Secondly, the overflow port claimed in the '406 patent includes both a sleeve feature and a hollow fitting feature. In light of the "significant" differences identified by the Examiner, Applicant respectfully requests that the Terminal Disclaimer be withdrawn. That is, in light of the Examiner's statements, it is believed that the claims of the instant application and the disclosure of the Ball '406 patent are patentably distinct, thereby rendering the double patenting rejection improper.

### **Interview**

As the Examiner will appreciate upon review of the file history, the prosecution of the instant application has not been smooth. Thus with the hopes of fostering a better relationship between Applicant and the Examiner, it is asked that before any substantive action is taken that an interview be conducted. Thus, the Examiner is invited to contact the undersigned.

Respectfully submitted,

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